

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 463 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5

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DENA BANK

Versus

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HARPALSINH DADUBHA CHUDASAMA

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Appearance:

MR CC KAMDAR for Petitioner

MR MK VAKHARIA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/09/98

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ORAL JUDGEMENT

This revision, under section 115 of the Code of Civil Procedure, has been filed against an order of the lower Court rejecting an application purporting to be an application under section 152 of the Code of Civil Procedure for correcting the clerical error in the judgment as well as clerical mistake in the judgment and also accidental slip in the judgment. The Court below

passed a decree in favour of the revisionist on 30.11.1994. When the judgment was pronounced certain accidental slips and omissions were noticed in the judgment so also the clerical error. On the same day application purporting to be under section 152 of the Code of Civil Procedure was moved by the plaintiff which was summarily rejected with the observation that since the judgment was pronounced on that day no amendment can be made.

The above order manifestly suffers from jurisdictional error, irregularity as well as illegality. The application was moved on the day the judgment was delivered in the main suit. Two types of accidental slips and errors were mentioned in the application. The first was that the defendant No.3 who was one of the sureties was also a party to the suit till disposal of the suit. In the judgment, decree has been passed only against two defendants and the third defendant was left out. The second accidental slip pointed out in the application was that, interest from the date of the suit till first part payment was not awarded by the Trial Court. Obviously this application was moved under section 152 of the Code of Civil Procedure. This application could be moved either on the date the judgment was delivered, ofcourse after delivery of judgment, or shortly thereafter. Such application could not be rejected simply on the ground that since the judgment was delivered on that date no correction was possible to be made. It appears that the Trial Court had no idea of Section 152 of the Code of Civil Procedure.

The Trial Court should have recapitulated section 152 of the Code of Civil Procedure, before passing the impugned order. Interalia section 152 of the Code of Civil Procedure provides that such clerical or arithmetical mistakes could be corrected suo motu by the Trial Court. Likewise if such error or accidental, slip was brought to the notice of the Court by one of the parties to the suit, the Court below should have issued notice to the otherside and after hearing the otherside should have decided the application. A copy of this application was already served on the otherside before it was moved in the Trial Court. Stil the Trial Court rejected the application summarily. The correction of clerical or arithmetical mistake in the judgment, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court. This legal mandate contained in section 152 of the Code of Civil Procedure was either not within the knowledge of the Trial Court or it acted in gross breach

of this provision. Consequently the impugned order suffers from jurisdictional error, irregularity and illegality. The revision has therefore to be allowed and is hereby allowed. The impugned order is set aside. Application under section 152 of the Code of Civil Procedure is remanded to the Court below with direction that it shall call upon the otherside to file objection if any against the application and then after hearing both the sides on this application, shall pass orders in accordance with section 152 of the Code of Civil Procedure as well as in accordance with law. Cost of the revision shall be on the parties.

Sd/-

m.m.bhatt